IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 31317 of 2006(C)

PETITIONER:

MS. P.M.MINI,
LECTURER IN MATHEMATICS, M.A.M.O. COLLEGE,
MANASSERY, MUKKOM, CALICUT.

BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH

RESPONDENTS:

1. THE UNIVERSITY GRANTS COMMISSION,
REPRESENTED BY ITS SECRETARY,
BAHADUSHA SAFAR MARG, NEW DELHI-110 002.

2. THE UNIVERSITY OF CALICUT,
REPRESENTED BY ITS REGISTRAR,
UNIVERSITY OF CALICUT, KOZHIKODE-673 001.

3. THE MANAGER,
M.A.M.O. COLLEGE, MANASSERY, MUKKOM,
CALICUT.

R1 BY ADV. SRI.S KRISHNAMOORTHY
SMT.S.KARTHIKA
SMT.T.B.REMANI
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SRI.T.R.RAJESH
SMT.K.P.GEETHA MANI
R2 BY ADV.SRI.P.C.SASIDHARAN
R3 BY ADV. SMT.V.P.SEEMANTHINI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 31317 OF 2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE NOTIFICATION PUBLISHED IN THE MATHRUBHOOMI DAILY DATED 06.05.96.

EXT.P2 : TRUE COPY OF THE G.O. NO.MS NO.114/2002/H.EDN. DATED 05.09.02.

EXT.P3 : TRUE COPY OF THE LETTER FROM THE DIRECTOR OF COLLEGIATE EDUCATION TO THE 3RD RESPONDENT DATED 26.06.02.

EXT.P4 : TRUE COPY OF THE UGC REGULATIONS OF 1991 DATED 19.09.91.

EXT.P5 : TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 06.10.03.

EXT.P6 : TRUE OCY OF THE LETTER FROM THE 2ND RESPONDENT TO THE 1ST RESPONDENT DATED 16.01.04.

EXT.P7 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP NO.9077/2002 DATED 04.04.02.

EXT.P8 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC 22870/04 DATED 03.08.04.

EXT.P9 : TRUE COPY OF THE LETTER OF THE UGC TO THE PETITIONER DATED 29.10.04.

EXT.P10 : TRUE COPY OF THE STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT IN CCC NO.1417/04 DATED 04.01.05.

EXT.P11 : TRUE COPY OF THE MINUTES OF THE STANDING COMMITTEE FOR EXEMPTION/RELAXATION IN QUALIFICATION OF THE 1ST RESPONDENT DATED 14.12.04.

EXT.P12 : TRUE COPY OF THE COMMUNICATION NO.GA II/F3/2397/2003 DATED JANUARY, 2005 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P13 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC 12143/2005 DATED 21.06.06.

EXT.P14 : TRUE COPY OF THE NOTIFICATION AMENDING THE QUALIFICATIONS FOR APPOINTMENT TO THE POST OF LECTURERS OF THE UGC DATED 14.06.06.

EXT.P15 : TRUE COPY OF THE M.PHIL MATHS RESULTS OF THE MADURAI KAMARAJ UNIVERSITY EXAMINATIONS APRIL,2006.

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EXT.P16 : TRUE COPY OF THE COMMUNICATION NO.F1-1/2003(PS) ISSUED BY THE 1ST RESPONDENT.

EXT.P17 : TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT GRANTING EXEMPTION TO MS.NIMMY THILAK AND OTHERS DATED 18.01.05.

EXT.P18 : TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT GRANTING EXEMPTION TO MR.SHAMEEN KAPPAN DATED 23.08.02.

EXT.P19 : TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT GRANTING EXEMPTION TO RAHIB B., DATED 07.02.05.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A) : TRUE COPY OF THE NOTIFICATION DATED 24.12.098 ISSUED BY THE 1ST RESPONDENT.

EXT.R1(B) : TRUE COPY OF THE UGC LETTER DATED 4.4.2000.

EXT.R1(C) : TRUE COPY OIF THE LETTER DATED 09.12.04 ISSUED BY THE 1ST RESPONDENT.

3RD RESPONDENT'S EXHIBITS:

EXT.R3(A) : TRUE COPY OF THE RELIEVING ORDER DATED 11.07.05 ISSUED BY THIS RESPONDENT.

/TRUE COPY/

PA TO JUDGE

S. SIRI JAGAN, J.

W.P.(C)No. 31317 OF 2006

Dated this the 27th day of November, 2007

JUDGMENT

In this writ petition, the petitioner challenges Ext.P16 order of the University Grants Commission, whereby the petitioner's request for exemption from NET qualification in exercise of powers conferred on the UGC under the proviso to Regulation 2 of UGC Regulations 1991 regarding minimum qualifications for appointment of teachers in Universities and Colleges, for the purpose of continuing as Lecturer in Mathematics in the 3rd respondent's College was rejected on the ground that the petitioner's appointment was not made in conformity with the regulations. The facts necessary for disposal of this writ petition, briefly stated, are as follows:

2. At a time when pre-degree education was still imparted in the Colleges in Kerala State, pursuant to Ext.P1 advertisement issued by the 3rd respondent, the petitioner was selected and appointed as Junior Lecturer in the 3rd respondent's

College. Subsequently, the Government took a policy decision to delink pre-degree from Colleges in Kerala, consequent to which a situation arose, whereby the petitioner and similarly placed teachers had to be deployed to Higher Secondary Schools. Because of the peculiar situation obtaining, the Government issued Ext.P2 order dated 5.9.2002, whereby the teachers like the petitioner were directed to be retained in the Colleges where there are vacancies of teachers as found by the Director of Collegiate Education and an opportunity was granted to such teachers for acquiring prescribed qualifications for appointment as lecturer within a period of two years giving preference in appointment to them as Lecturers in future vacancies in the Colleges. Presumably, pursuant to Ext.P2 order, the 3rd respondent appointed the petitioner as Lecturer by Ext.P5 appointment order, subject to the conditions in Ext.P2. However, the petitioner could not obtain NET qualification within the prescribed period. Therefore the petitioner approached the UGC for exemption from the requirement of NET qualification as a necessary qualification

for appointment as Lecturers in Colleges.

2. The petitioner approached this Court by filing O.P. No.1977/2002 complaining that although similarly placed teachers have been granted exemption, the petitioner's application for exemption was not being considered by the UGC. By Ext.P7 judgment, this Court disposed of that original petition directing the UGC to consider and pass orders on the application for exemption submitted by the petitioner. In that judgment it was specifically directed that the petitioner would be free to urge all her contentions including those relying on Exts.P10 and P11, (in that O.P.) which are orders wherein identical relief had been granted to similarly placed persons. The petitioner again approached this Court by filing W.P. (C) No.22870/04 for the same relief, in which also there was a direction to the UGC to consider the petitioner's representation in that regard. Pursuant thereto, by Ext.P12, the UGC rejected the request of the petitioner on the ground that her appointment was not made in conformity with the regulation (1991) issued by the UGC in this regard. The petitioner again

approached this Court with W.P.(C) No.12143/05, in which this Court found that the contention of the petitioner is acceptable and accordingly, Ext.P12 order rejecting her request was quashed as not justifiable and directed the UGC to consider the matter afresh and pass appropriate orders thereon. Pursuant thereto Ext.P16 order has been passed by the UGC again rejecting the petitioner's claim on the ground that the appointment was not made in conformity with the regulation (1991) issued by the UGC in this regard and adding one more ground to the effect that the petitioner was appointed Junior Lecturer and Junior Lecturer do not come under the purview of the UGC. This is under challenge before me.

3. The UGC has filed a counter affidavit supporting Ext.P16 order justifying the same on the ground that the appointment of the petitioner was not made in conformity with regulations (1991) issued by the UGC in this regard.

4. I have considered the rival contentions in detail. In Exts.P12 and P16 or in the counter affidavit before me the UGC has not chosen to state as to how the appointment of the

petitioner is not in conformity with the regulation (1991)issued by the UGC except of course that the petitioner did not have NET qualification. If the petitioner had in fact NET qualification, the question of seeking exemption under the proviso to Regulation 2 of the Regulations of the UGC would not arise at all. Apart from that it is not stated as to what is the other requirement, which has not been complied with in the appointment of the petitioner. The University of Calicut, to which the College in which the petitioner has been appointed, has been affiliated, has forwarded Ext.P6 communication to the UGC wherein names of 10 teachers, who have been granted relaxation from NET qualification has been given. Although the University does not specifically recommend the case of the petitioner for exemption from NET qualification from the tenor of Ext.P6, it is abundantly clear that the petitioner's case is identical to those of the ten lecturers mentioned therein, who have been granted exemption from NET qualification. In Ext.P7 judgment, this Court had specifically directed the UGC to consider the contentions of the petitioner relying on the

orders, where identical relief has been granted to similarly placed persons. Those similarly placed persons are those whose names are specifically stated in Ext.P6 communication from the University. The orders of the UGC or their counter affidavit does not show anywhere that this specific direction of this Court to consider the contention of the petitioner relying on orders wherein identical relief has been granted to similarly placed persons has been specifically considered.

5. I am of opinion that the UGC has not considered the case of the petitioner in accordance with the direction of this Court. This is further clear from a comparison between Exts.P12 and P16 orders. It would be advantageous to quote the orders in full. Ext.P12 reads thus:

> "With reference to your letter No.GA-II'F3/2397/03 dated 28.8.2003, on the above subject, I am directed to say that the matter was placed before the Exemption Committee in its meeting held on 14.12.2004 for its consideration and subsequently its recommendations were placed before the Commission at its meeting held on 24/12/2004. The Commission, after careful consideration, did not agree to give exemption since the appointment was not made in

> conformity with the regulation (1991) issued by the UGC in this regard."

Ext.P16 reads thus:

> "In continuation of this office letter No.F1-1/2003 (PS) dated 19.1.05 on the above subject, I am directed to inform you that the matter was placed before the Commission at its meeting held on 24th October, 2006. After careful consideration, the Commission did not agree to give exemption since the appointment was not made in conformity with the regulation (1991) issued by the UGC in this regard. Moreover, Mrs. P.M. Mini was appointed junior Lecturer & Junior Lecturer do not come under the purview of the UGC. The University shall appoint Lecturer through direct recruitment by open advertisement."

There is absolutely no difference between Exts.P12 and P16 orders with regard to the reason mentioned for rejecting the claim of the petitioner, although Ext.P12 has been quashed by this Court in Ext.P13 judgment holding that the petitioners contention against Ext.P12 is acceptable. It would be advantageous to quote the operative portion of Ext.P13 judgment in this regard. After holding in paragraph 6 that the contention of the learned counsel for the petitioner is

acceptable, in paragraph 8 it was held thus:

> "In the above circumstances, this Court is of the view that the rejection of the request of the petitioner is not justifiable and hence Ext.P11 is liable to be quashed. Accordingly, Ext.P11 is quashed. The 1st respondent is directed to consider the request of the petitioner afresh and pass appropriate orders thereon. This shall be done in the preceding meeting of the committee on receipt of copy of this judgment.

Ext.P13 judgment wherein this Court had specifically found that rejection of the request of the petitioner is not justifiable and hence the order rejecting the petitioner's request is liable to be quashed has not been subjected to challenge by the UGC or anybody else. Since the said judgment has become final, I do not think that the UGC could have rejected the petitioner's claim for the very same reason mentioned in Ext.P12. As such, Ext.P16 is liable to be quashed. I do so. Ordinarily, this Court would have directed the UGC to consider the matter afresh. But because of the recalcitrant attitude of the UGC, I am not prepared to trust them to take a just decision in accordance with Ext.P13 judgment since in spite of 3

judgments of this Court the UGC has been rejecting the petitioners request on the very same ground. Therefore, I am inclined to issue a positive direction to the UGC.

6. Accordingly, I direct the 1st respondent University Grants Commission to issue orders granting exemption to the petitioner from NET qualification in exercise of their powers under the proviso to regulation 2 of UGC Regulations (1991) regarding minimum qualifications for appointment of teachers in Universities and Colleges as in the case of the 10 lecturers detailed in Ext.P6 communication from the Calicut University. Orders in this regard shall be passed by the UGC within a period of one month from the date of receipt of a copy of this judgment. In the meantime, the petitioner shall be allowed to continue as Lecturer by virtue of Ext.P5 appointment order and the same shall be regularised on receipt of formal orders from the UGC in accordance with this judgment.

The writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

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